



HUD' s Guidance on Nuisance and Crime-Free Ordinances as they Affect Domestic Violence (DV) Survivors and Other Protected Classes

Who is HUD addressing in this guidance?

- Local governments and rental housing providers

Who are the effected parties that HUD (and the Fair Housing Act) is trying to protect?

- Survivors of domestic violence and other individuals who have been victims of crimes or who might need to solicit emergency services

Quick takeaways:

- Domestic violence survivors, crime victims, and other individuals seeking emergency services are being disproportionately affected by these types of Nuisance and Crime-Free Ordinances.
- Women, especially, are being disproportionately affected by these ordinances and thus this raises Fair Housing concerns.
- City and local officials need to reassess their use of such policies and seek out alternative means to creating safe communities.
- Such ordinances might violate not only Fair Housing laws but also the VAWA which protects domestic violence survivors from being denied tenancy, occupancy, and/or assistance.

What follows is a synopsis of the steps and evidence needed to challenge the legality of Nuisance and Crime-Free Ordinances under the Fair Housing Act:

I. Proving Disparate Impact and Illegal Discrimination

HUD provides the following steps in identifying illegal housing discrimination as it applies to the enforcement of nuisance and crime-free ordinances.

STEP 1: *Does this policy/ordinance have a discriminatory effect?*

The person alleging that a nuisance or crime-free ordinance impacts them in a discriminatory fashion is charged with proving disparate impact or disparate treatment. Data is often useful in demonstrating this, such as: resident data and files, demographic data, city and police records, citations and correspondence between housing providers and city officials, etc. National statistics can also be born to bear in such cases. For example, in 2013 80% of domestic violence survivors were female, thus helping prove that women, as a protected class, are disproportionately affected by such nuisance and crime-free ordinances.

STEP 2: *Is the policy/ordinance necessary to achieve a “substantial, legitimate, nondiscriminatory interest”?*

Local governments and housing providers must prove that the ordinance in place serves a specific organizational interest and is NOT merely speculative or hypothetical in its actual effectiveness. Any justification for these ordinances based on generalizations and/or stereotypes are not valid in proving effectiveness.

***Municipalities are often unsuccessful in proving the “substantial, legitimate, (and) nondiscriminatory interests.” ***

STEP 3: *Is there an alternative that would be less discriminatory?*

If the local government successfully proves that the ordinance serves a “substantial, legitimate, nondiscriminatory interest”, then it falls upon the person alleging illegal discrimination or HUD to provide a viable alternative policy that would equally serve the local government’s/housing providers interests.

II. Questions of Intentionality

There are instances in which local governments use such ordinances to intentionally discriminate against a particular protected class. The HUD guidance outlines two possible instances of this and gives us steps as to how to structure a Fair Housing complaint in such situations.

1. Targeting protected classes:

There have been cases in which an ordinance which appears to be neutral has actually intentionally discriminated against a protected class. When dealing with such cases, the person alleging illegal discrimination must consider the following:

- A. The impact of the ordinance (Who does it impact, specifically?)
- B. The historical background of the ordinance (Is there a history of discrimination within the municipality?)
- C. Timeline of when municipality adopted the ordinance
- D. Evidence that the municipality deviated from “normal procedure sequence” when implementing the ordinance
- E. Evidence that the municipality failed to consider important factors they normally look at when creating and adopting ordinances
- F. Legislative or administrative records

2. Discriminating through selective application:

Ordinances can be intentionally discriminatory when they are SELECTIVELY applied. In these situations, these four steps are essential to successfully bringing the housing provider or local government to justice/court.

- A. The person alleging discrimination must prove that he/she is a member of a protected class
- B. Proof that the local government official or housing provider took action to enforce the ordinance against the individual (injured party) for allegedly engaging in criminal or nuisance conduct

C. Proof that the official/provider did not act the same in a circumstantially similar case

D. Evidence that the official/provider injured the individual by taking certain housing actions (i.e. evicting) as a result of the nuisance or crime free ordinance

State of Arizona' s Nuisance Law

12-991. Nuisance; applicability; residential property used for crime; action to abate and prevent; notice; definitions

A. Residential property that is regularly used in the commission of a crime is a nuisance, and the criminal activity causing the nuisance shall be enjoined, abated and prevented.

B. If there is reason to believe that a nuisance as described in subsection A of this section exists, the attorney general, the county attorney, the city attorney, an association of homeowners or property owners established by a recorded contract or other declaration, including a condominium association as defined in section 33-1202 and a planned community association as defined in section 33-1802, or a resident of a county or city who is affected by the nuisance may bring an action in superior court against the owner, the owner's managing agent or any other party responsible for the property to abate and prevent the criminal activity.

C. The court shall not assess a civil penalty against any person unless that person knew or had reason to know of the criminal activity.

D. An injunction that is ordered pursuant to this article shall be necessary to protect the health and safety of the public or prevent further criminal activity.

E. An order shall not affect the owner's interest in the property unless all of the following apply:

1. The owner is a defendant in the action.
2. The owner knew of the criminal activity.
3. The owner failed to take reasonable, legally available actions to abate the nuisance.

F. If the owner, the owner's managing agent or the party responsible for the property knows or has reason to know of the criminal activity and fails to take reasonable, legally available actions to abate the nuisance, a governmental authority may abate the nuisance. The court may assess the owner for the cost of abating the nuisance. On recording with the county recorder in the county in which the property

is located, the assessment is prior to all other liens, obligations or encumbrances except for prior recorded mortgages, restitution liens, child support liens and general tax liens. A city, town or county may bring an action to enforce the assessment in the superior court in the county in which the property is located.

G. For purposes of this section, an owner, the owner's managing agent or the party responsible for the property is deemed to know or have reason to know of the nuisance if the owner, the owner's managing agent or the party responsible for the property has received notice from a governmental authority of documented reports of criminal offenses occurring on the residential property.

H. A law enforcement agency, a city attorney, a county attorney, the attorney general or any other person who is at least twenty-one years of age may serve the notice provided for in subsection G of this section, either personally or by certified mail. If personal service or service by certified mail cannot be completed or the address of the person to be notified is unknown, notice may be served by publishing the notice three times within ten consecutive days in a newspaper of general circulation in the county in which the property is located. In all cases a copy of the notice shall be posted on the premises where the nuisance exists.

I. The notice shall be printed in at least twelve-point type in substantially the following form:

Notice

This is formal notice that the property at (insert address and unit number if applicable) has had (insert number of) arrests or (insert number of) documented reports of alleged criminal activity and is considered a nuisance under section 12-991, Arizona Revised Statutes. A copy of the police report numbers is attached. Police reports are available at (insert applicable police agency).

Within five business days you must begin to take action that is legally available to you to abate the nuisance from the property. If you fail to do so, a restraining order to abate and prevent continuing or recurring criminal activity will be pursued.

If you fail to cooperate to abate the nuisance, the appropriate authorities will abate the nuisance and their costs will be a lien on the property.

You may contact (local agency) in order to obtain information on how to abate the nuisance.

J. For the purposes of this article:

1. "Owner" means a person or persons or a legal entity listed as the current title holder as recorded in the official records of the county recorder in the county in which the title is recorded.
2. "Owner's managing agent" means a person, corporation, partnership or limited liability company that is authorized by the owner to operate and manage the property.